

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**COMMENTS of
THE HOME TELEPHONE COMPANY, INC. and
PBT TELECOM, INC.**

Home Telephone Company, Inc and PBT Telecom (collectively “Companies”) hereby submit these comments in response to the Federal-state Joint Board on Universal Service’s (Joint Board) Public Notice dated August 16, 2004. The Companies are rural incumbent local exchange carriers (ILECs) operating in South Carolina. The Notice seeks comment on issues related to the high-cost universal service support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the Commission’s Rural Task Force Order.¹

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125 (rel. June 28, 2004) (*Referral Order*) (citing *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) (*Rural Task Force Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. June 1, 2001)).

The Joint Board seeks comment on a number of specific issues related to fundamental concepts associated with universal service such as on what cost basis universal service support should be based, how “rural telephone companies” should be defined, should multiple study areas within a state be combined, and whether rules related to support for transferred exchanges should be retained or modified. The Companies’ comments address the first of these issues, the appropriate cost basis for determining universal service support. While the Joint Board seeks input on very fundamental issues, in one important respect, the Joint Board’s mission to examine universal service rules and procedures concerning funding does not go deep enough. Although the Joint Board asks for comment on the very basic definitional issues associated with universal service funding, it fails to address the most fundamental issue: why is the funding necessary? Without addressing and holding in sight for guidance, this most fundamental issue, no solution proposed by the Joint Board or adopted by the FCC will rectify the problems associated with the existing federal universal service mechanisms.

In order to ensure appropriate universal service mechanisms with respect to both contributions and support, this key issue to clearly define the purpose of the universal service fund must be addressed. Why is a universal service fund needed? The correct answer to this question forms the foundation upon which all universal service funding rules and regulations must be based. Without a firm foundation no viable structure is possible. Unfortunately, currently the question has been answered incorrectly and as a result there is a flaw in the foundation on which the USF mechanism is constructed.

The Companies believe that it is confusion over this singular, fundamental issue that leads to the need to examine the basic issues now being addressed. The fund cannot both promote competition and ensure affordable pricing at the same time. It is fitting, inasmuch as it was Joint Board actions that introduced this foundational flaw that the Joint Board now undertakes to address necessary repairs. The flaw, while not readily apparent when introduced, has become obvious under the weight of the increased demand placed on the universal service system. Until the foundation is secured, any structures added will remain unstable. The Joint Board must move past the symptoms and treat the real underlying problem. Even if everything above the foundation is dismantled and an entirely new structure created, it too will soon suffer from the weakness in the foundation. The Joint Board must clearly and forcefully address the “why” of universal service mechanisms before it can possibly address the “who” or the “how.”

The Joint Board created the fatal flaw in the foundation by attempting to correct a perceived problem with the 1996 Telecom Act. In adding what, at the time seemed to be several very innocent words, which were intended to convey concern that the federal universal service funds be administered in a “competitively neutral” manner, the Joint Board introduced and the FCC adopted language that has been misapplied and misconstrued to such an extent that it now threatens to topple the very fund created to ensure telecommunication infrastructure in rural America was not destroyed by the competition the Act unleashed.

Congress, in enacting the 96 Telecom Act, recognized the need to balance competition in the general market, with the public necessity to maintain state of the art telecommunication infrastructure in rural America. To protect against the very natural inclination of competition to focus on the densely populated profitable markets, Congress created the universal service fund to protect rural markets, where population density made service by even a single company unprofitable.

It is ironic in that what Congress intended as a counter balance against harm to the rural areas of our country has become an instrument to force competition into all areas of the country. The very mechanism Congress added to their legislation to protect rural America from being harmed by competitive excess has been misconstrued and is becoming a weapon to be used against rural America.

Confusion created by existing regulatory treatment of universal service funding mechanisms is manifested in several destructive ways. First, in some cases inefficient competition is being created in some high cost areas where even a single provider cannot operate profitably without high universal service funding. Second, the failure to clearly define the purpose of funding is leading to a rapid expansion in funding requirements as the mere existence of a competitor is accepted as reason for funding. In effect, all Americans are being overcharged in order to create a fund large enough to support inefficient competition. Third, as the size of the fund grows, without a clear purpose for the application of the funds, it produces efforts, such as those recommended by the Joint Board, to limit the fund size. This creates uncertainty within the rural telecommunications industry as to whether investments in new infrastructure can ever be

recovered, and will have a chilling effect on the deployment of new infrastructure in rural America.

Entities never originally envisioned as potential recipients of funding when universal service mechanisms were implemented have discovered a fountain of revenue. All because of flaws in the rationale related to the purpose of the funding. A Pandora's box has been unintentionally opened due to the lack of a firm public policy as to the purpose of Federal universal service mechanisms. It is time to either close the lid on the Pandora's box or to clearly define the public policy rationale for the receipt of funding.

We submit that the Joint Board should return to the statutory goals for universal service funding, that to ensure that consumers in all regions of the country have access to telecommunication services that are reasonably comparable to those provided in urban areas at reasonably comparable rates. If the Joint Board were to clearly define this statutory goal as the primary purpose of universal service support and measure all of its policy recommendations thereby, many of the issues and concerns being addressed in this notice would be resolved.

To focus on the specific issues related to cost basis of support the Public Notice requests comment on "whether a rural support mechanism that bases support on forward looking economic cost estimates or on embedded cost more efficiently and effectively achieve the Act's goals."² Once focused on the true goal of universal service support, the answer to this question is self-evident. The goal is to actually provide service at comparable rates. This requires the

² Public Notice at ¶21.

actual expenditures of capital, not the development of a best case, economic model. The Act does not call for the theoretical ability to have comparable rates and services, but the practical application of these concepts. This can only be accomplished by using actual embedded cost. The use of theoretical economical models is only necessary to provide for a base line to determine support for potential market entrants. The focus, when using models, is on using support to encourage competition, rather than ensuring rural service at affordable rates. Once the flawed “competitive neutrality” rationale is eliminated as the prime motive for universal service support, there is no rational reason to consider forward looking cost mechanisms. Such models do not, and cannot provide the necessary incentive for rural investment. Only with reasonable assurance that actual dollars invested can be recovered will investment occur.

In regards to questions related to the development of a “statewide” average cost for calculation of universal service support, the Joint Board should reject any such proposal. If the focus of funding is clear, then it would be obvious that support is needed because individual carriers’ exceed “average” cost. The broader the measurement base, the less granular the support targets. Again, the Act requires support for rural areas of the county, not just the rural states.

To understand the fallacy of this approach, simply expand the averaged-base to the next political boundary. The result would be no support within the country as long as the national average did not exceed the average of all cost. This would be absurd, since the national average could never exceed itself. The purpose of the funding is to support “areas” of the country where cost exceeds the average cost of service. It is clear within any state the existence of larger urban areas will have the effect of lowering the state wide average cost. Yet it is the consumers within

the less populated, rural areas the fund was intended to protect. The Joint Board should reject any efforts to adopt statewide averages for calculation of Universal Service support.

In considering the basis of support for competitive ETCs (CETCs), the same embedded cost standards applied to Incumbent LEC's (ILECs) should be utilized for CETCs. The issue of determining when multiple ETCs should be authorized in high cost areas aside, if a determination is made that such designates are in the public interest, support should only be provided based on actual cost of the ETC. The cost must be determined in a consistent basis and, thus, all ETCs should be required to adopt common accounting and separation rules and report actual cost. In determining the public interest of an additional ETC, consideration should be given to efficiency of the new ETC. Will their cost exceed the existing carrier's cost? If so, would the public interest be served to designate the carrier an ETC? If not, ETC designation should be denied.

The final issue we address is "capping" of the fund. When considered, in light of the correctly focused purpose of support, the concept of "capping" support is clearly contradictory. A funding cap is not compatible with the legislative intent of universal service, which is to ensure the provision of specific, predictable and sufficient support to ensure consumers in all regions of the country have access to telecommunication services comparable in price and quality to those provided in urban areas. The only way to cap or control funding while meeting the requirement of the Act is by controlling the process of designating additional ETCs. If such designation raises the funding level to unacceptable points, public interest would dictate that ETC status be denied.

In conclusion, it is the Companies' position that, if the Joint Board were to focus on the clear legislative intent related to universal service funding and develop rules and regulations consistent with this intent, most of the issues addressed in this Public Notice would be resolved. We urge the Joint Board to reaffirm that the primary goal of the Universal Service funding mechanism to ensure that the rural consumers have access to high-quality services, including advanced services, which are reasonably comparable to those available in urban areas, at reasonably comparable rates.

The problems that exist in the current funding mechanism can be directly traced back to the misdirected focus on competition rather than the protection of rural subscribers. The only changes required to the high-cost support mechanism for rural telephone companies are changes to restore focus on the original legislation intent of protecting rural consumers. The Joint Board should recommend the elimination of the existing funding caps, strengthen the criteria that should be met for designation as a rural ETC and require any CETCs in rural areas to be funded based on actual cost of the CETC.

Most importantly, the Joint Board should clearly proclaim that universal service funding is intended to ensure all subscribers have access to quality telecommunication service at affordable rates. The Joint Board must act to restore funding mechanisms to their original focus. Failure to do so could lead to the destruction of the funding mechanism rural consumers depend upon. The cost of such failure is too high for rural America. The time is right for the Joint Board to act to refocus the funding mechanism and it is critical that the Joint Board get it done.

Respectfully submitted,

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October 15, 2004